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The Honorable Mary K. Dimke

7
8 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF WASHINGTON
9 **AT SPOKANE**

10 AMANDA BANTA, et al.,

11 Plaintiffs,

12 v.

13 ROBERT W. FERGUSON, Attorney
General of the State of Washington, et
14 al.,

15 Defendants,

16 ALLIANCE FOR GUN
RESPONSIBILITY,

17 Defendant-Intervenor.
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NO. 2:23-cv-00112-MKD

STATE DEFENDANTS'
MOTION FOR LEAVE TO
FILE SURREPLY TO
PLAINTIFFS'
SUPPLEMENTAL REPLY

1 **I. INTRODUCTION AND RELIEF REQUESTED**

2 Defendants Robert W. Ferguson and John R. Batiste (the State Defendants)
 3 request leave to file a surreply to respond to new arguments raised in Plaintiffs’
 4 August 8, 2023 letter to this Court, ECF No. 42-2. That letter is effectively a
 5 supplemental reply in support of Plaintiff’s Motion for Preliminary Injunction,
 6 and the State requests an opportunity to respond for the sake of fairness and to
 7 correct certain errors in Plaintiffs’ letter.

8 **II. ARGUMENT**

9 Plaintiffs’ August 8, 2023, letter to this Court is effectively an improper
 10 supplemental reply filed without leave of the court; Plaintiffs did not merely
 11 submit notice of supplemental authority, but also offered argument without leave
 12 to do so. *See generally* LCivR 7 (providing for a motion, response, and reply, but
 13 not a surreply); *see, e.g., Miller v. Boilermaker-Blacksmith Nat’l Pension Tr.*,
 14 No. 2:20-CV-317-RMP, 2021 WL 6246625, at *2 (E.D. Wash. May 20, 2021)
 15 (when a party presents new argument after filing its substantive brief, it is “simply
 16 a matter of fairness” for the Court to either decline to consider the new material
 17 or grant “leave . . . to file a sur-reply”); *Eslick v. Washington*,
 18 No. 2:21-CV-0282-TOR, 2021 WL 6063221, at *7 (E.D. Wash. Dec. 22, 2021),
 19 *reconsideration denied*, No. 2:21-CV-0282-TOR, 2022 WL 71786 (E.D. Wash.
 20 Jan. 6, 2022) (“Generally, . . . no supplemental response or supplemental replies
 21 to any motion may be filed unless the Court grants a motion to file such
 22

documents”; reminding party that “Local Rule 7 . . . provides for one response memorandum for each motion”); *cf.*, *e.g.*, *Hagens Berman Sobol Shapiro LLP v. Rubinstein*, No. C09-0894 RSM, 2009 WL 3459741, at *1 (W.D. Wash. Oct. 22, 2009) (striking surreply that improperly contained argument regarding supplemental authority, under Western District of Washington’s rules). Here, to avoid undue prejudice, the State Defendants respectfully seek leave to submit the proposed response attached hereto to address the substantive arguments made in Plaintiffs’ supplemental reply. In the alternative, the State moves to strike Plaintiffs’ improper supplemental reply.

III. CONCLUSION

This Court should grant State Defendants the opportunity to file the Surreply attached hereto.

RESPECTFULLY SUBMITTED this 10th day of August 2023.

ROBERT W. FERGUSON
Attorney General

/s/ Andrew Hughes

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DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System which will serve a copy of this document upon all counsel of record.

DATED this 10th day of August 2023, at Seattle, Washington.

/s/ Andrew Hughes

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